

Internal Revenue Service
memorandum

CC:TL

Br4:DICrosby

date: 9 JUL 1986

to: District Counsel, New Orleans CC:NO
Attn: Linda West

from: Director, Tax Litigation Division CC:TL

subject:

Request for Technical Advice

This is in response to your undated request for technical advice in the above case, received in this office on June 24, 1986. Because briefs are due to be filed with the Tax Court on [REDACTED], we informed you of our conclusion by telephone on [REDACTED]. This memorandum will confirm the advice given in that conversation on that date.

ISSUES

1. Does Code section 170(e) limiting the amount of the charitable contribution to the partnership's basis, apply to the facts of this case? 0170.13-00

2. If so, what is the proper calculation of the basis in the facade? Specifically, does basis include amounts irrevocably committed to renovation and placed in escrow before and/or simultaneously with the donation of the facade? 0170.13-00

CONCLUSIONS

1. Yes, Code section 170(e) applies to donations of facades or facade "easements". Because the property in this case was only held by the donor for [REDACTED] weeks prior to the donation, the donor is limited to its basis in the donated property,

2. The partnership's basis includes amounts placed in escrow for renovation of the facade before and/or simultaneously with the donation of the facade. The correct computation of the partnership's basis, based on the facts presented in the request for technical advice, is shown below.

FACTS

Petitioners have a [REDACTED] interest in [REDACTED], a partnership which purchased property located at [REDACTED] and [REDACTED] in [REDACTED] on [REDACTED]

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██████████. The partnership paid \$██████████ for the property and simultaneously entered into an agreement to renovate the property, depositing \$██████████ in an escrow account to insure performance of the agreement. On ██████████, an amendment to the renovation agreement was executed, obligating ██████████ to expend another \$██████████ on renovation.

On ██████████, ██████████ granted to the ██████████ a perpetual real right burdening the subject property with an agreement "to preserve and maintain the roof, the ██████████ and ██████████ exterior facade(s) and the foundation, and structural support of the property..."

██████████'s partnership return for ██████████ claimed a charitable contribution deduction in the amount of \$██████████; petitioners claimed their share, or \$██████████, as a charitable contribution on their ██████████ income tax return.

At the trial of this case, held in ██████████, ██████████, respondent's expert witness, ██████████, determined the value of the donated property by following the Tax Court's decision in Hilborn v. Commissioner, 85 T.C. 677 (1985). This calculation was as follows:

Before Value:

Cost of Property	\$██████████
Closing Costs	██████████
Renovation Commitment	██████████
Total	\$██████████

Times Diminution %	██████████%
Diminution Value	\$██████████

Respondent's statutory notice of deficiency used a different method of calculating the partnership's basis in the donated property, as follows:

Selling price of facade	\$██████████
Basis of Facade	
(10% of building cost)	██████████
Ordinary income portion of assumed gain	\$██████████
Tentative contribution claimed	\$██████████
Less: Ordinary income portion of assumed gain	██████████
Total allowable partnership contribution	\$██████████

You wanted to know whether we should take the position on brief that "while the value of the facade donation to the partnership was \$ [REDACTED], the partnership's basis in the facade was \$ [REDACTED], as determined in the statutory notice."

DISCUSSION

You are correct that because the partnership held the donated property for only [REDACTED] weeks, Code section 170(e) operates to limit the donation to the partnership's basis in the donated property. This issue was previously discussed in the technical advice this office rendered on July 31, 1984, in the Hilborn case. There seems to be no disagreement or misunderstanding about the applicability of that section to this case.

However, the correct computation of the partnership's basis has created some confusion. Because Code section 170(e) ties into the capital gains sections of the Code, this matter was informally coordinated with David Fegan of Branch 2 of the Tax Litigation Division who is the resource person assigned to that issue. Both Branch 4 (assigned charitable contribution issues) and Branch 2 agree that the correct computation of the partnership's basis is that shown in [REDACTED]' calculation: basis in this case includes initial purchase price, closing costs and amounts placed in escrow. That gives the partnership's basis in the entire building. The 10% diminution formula is then applied to determine, as in Hilborn, supra, the value of the donation.

Taxpayers apparently claim that the building was purchased at a bargain and they are entitled to a donation above basis; but clearly, under Code section 170(e) such is not allowable. As long as you are satisfied that the amounts placed in escrow were irrevocably beyond the power of the taxpayer to divert, then those amounts should be included in the computation of basis.

ROBERT P. RUWE
Director

By: Henry G. Samsy

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7/7/86